

Chapter 1410

Right of Way Considerations

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1410.01 General

Real Estate Services personnel participate in the project definition phase of a project to assist in minimizing right of way costs, defining route locations and acquisition areas, and determining potential problems and possible solutions.

Due to the variables in land acquisition, the following categories of right of way costs are considered in the project definition phase.

- Purchase costs (acquisition compensation).
- Relocation assistance benefits payments.
- Other Real Estate Services staff expenses (acquisition services, relocation services, interim property management services).

Right of way cost estimates are made by Real Estate Services specialists. When the parcels from which additional right of way will be acquired are known, title reports (including assessors' land areas) can be requested.

Real Estate Services personnel also "make project field inspections at appropriate times throughout the development of a project to ensure adequate consideration is given to significant right of way elements involved (including possible social, economic, and environmental effects)" in accordance with 23CFR Chapter 1 part 712 subpart B and the *Right of Way Manual*.

During plan development:

- Title reports are examined for easements or other encumbrances that would reveal the existence and location of water lines, conduits, drainage or irrigation lines, etc., that must be provided for in construction.

- Easements that indicate other affected ownerships are added to the right of way/access plan.
- Arrangements are made to obtain utility, railroad, haul road, detour routes, or other essential agreements, as instructed in the *Utilities Manual* and the *Agreements Manual*.
- Right of way acquisition, disposal, and maintenance is planned.
- Easements and permits are planned (to accommodate activities outside of the right of way).

See Chapter 440 concerning design right of way widths. The widths may be modified based on Real Estate Services input but cannot be moved to coincide with property boundaries in anticipation of a total take. Jogs in the final widths of the right of way are held to a minimum. See *Right of Way Manual* Chapter 6 for discussion of remainders.

All acquisition documents are processed through the Headquarters (HQ) Real Estate Services Office except temporary permits that are not shown on the Right of Way Plans and are not needed for the project (such as driveway connections).

1410.02 References

Code of Federal Regulations 23 CFR Chapter 1 part 712 subpart B, General Provisions and Project Procedures

49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition Act of 1970

Revised Code of Washington (RCW) RCW 8.26, Relocation Assistance - Real Property Acquisition Policy

Washington Administrative Code (WAC) WAC 468-100. Uniform Relocation Assistance and Real Property Acquisition

Agreements Manual, M 22-99, Washington State Department of Transportation (WSDOT)

Plans Preparation Manual, M 22-31, WSDOT

Right of Way Manual, M 26-01, WSDOT

Utilities Manual, M 22-87, WSDOT

1410.03 Special Features

(1) Road Approaches

On access managed highways, the department will reconstruct legally existing road approaches that are removed or destroyed as part of the highway construction. New approaches required by new highway construction are negotiated by the region with the approval of the Regional Administrator. The negotiator coordinates with the region's design section to ensure that new approaches conform to the requirements of Chapter 920 for road approaches. All new approaches will be by permit through the appropriate regional office.

On limited access highways, road approaches of any type must be approved by the State Design Engineer before there is legal basis for negotiation by the Headquarters (HQ) Real Estate Services Office. When approved, approaches will be specifically reserved in the right of way transaction and will contain the identical limitations set by the State Design Engineer and as shown on the approved Limited Access Plan.

(2) Cattle Passes

The desirability of, or need for a cattle pass will be considered during the appraisal or negotiation process. A cattle pass will be approved only after complete studies of location, utilization, cost, and safety elements have proved its necessity. Upon approval, such an improvement and appurtenant rights will be established. Future right of access for maintenance is negotiated during acquisition.

On limited access highways, approval of the State Design Engineer and the addition of a traffic movement note on the right of way and limited access plan (*Plans Preparation Manual*) are required.

(3) Pit, Stockpile, and Waste Sites

These sites are investigated and planned as outlined in the *Plans Preparation Manual*. Detour and haul road agreements, approved by the Regional Administrator, are necessary when the state proposes to use city streets or county roads

for the purpose of detouring traffic or hauling certain materials. See the *Utilities Manual* for detour and haul road agreement guidelines.

(4) International Boundaries

Construction proposed "within a 20-foot strip, 10 feet on each side of the international boundary," must be coordinated between the department and the British Columbia Ministry of Highways and Public Works.

Permission of the International Boundary Commission is required to work "within 10 feet of an international boundary." Their primary concern is monumentation of the boundary line and the line of sight between monuments. They require a written request stating what will be done, when, and why; sent to 1250 23rd Street NW, Washington DC 20037.

1410.04 Easements and Permits

(1) General

If others request rights within existing WSDOT ownership, they are to contact the region's Real Estate Services Office.

Easements and permits to accommodate WSDOT activities outside the right of way usually fall into one of the categories defined below.

Easements and permits are processed in accordance with the requirements of the *Right of Way Manual*. The region's Real Estate Services Office drafts the legal descriptions for all easements and permits for acquisition or disposition of rights. These requests are to be directed through the region's Real Estate Services Manager.

The region's Real Estate Services Office either obtains or assists in obtaining easements and permits. The region is responsible for compliance with and appropriate retention of the final documents. Easements and permits are to be shown on the contract plans in accordance with the *Plans Preparation Manual*.

(2) Perpetual Easements

Perpetual easements are shown on the right of way plans in accordance with the *Plans Preparation Manual*.

(a) **State Maintenance Easement.** Used when the state is to construct a facility and provide all maintenance. Examples are slope and drainage easements.

(b) **Dual Maintenance Easement.** Used when the state is to construct and maintain a facility and the owner is to maintain the remainder. Examples are; the surface area above a tunnel and the area behind a retaining wall or noise wall.

(c) **Transfer Easement.** Used when an easement must be acquired to replace an existing easement for a facility that is to be relocated. The region's Real Estate Services Office obtains or prepares instruments that contain all necessary rights and provide for maintenance by the party to whom the easement will ultimately be conveyed. Easements are conveyed when they remain within state rights of way and are replacing existing property rights. Easements are transferred only when the easement is outside the state right of way and not needed for highway purposes. The right of way/limited access plan is modified to identify the party to whom the easement will be transferred. The department cannot obtain easements for transfer across lands under the jurisdiction of the Department of Natural Resources (DNR). WSDOT cannot condemn for a transfer easement to a private party.

(3) Temporary Easements

Temporary easements are used when the state requires a property right of a temporary nature that involves either more than minor work or construction activities on privately owned property. In the cases where the rights required or the work to be performed is not beneficial to the property owner, just compensation may be paid.

Temporary easements are usually shown on the right of way plans in accordance with the *Plans Preparation Manual* when the encroachment is significant; more than about 5 ft. Consult the region's Plans and Real Estate Services personnel for exceptions. If the easement is not mapped, mark and submit plans as described for construction permits.

(4) Construction Permits

Construction permits are used for temporary rights during construction and not used when WSDOT needs a perpetual right. A construction permit is recommended for rights of entry to publicly owned property. Local agencies might require the use of specific Forms when applying for these rights of entry. Regardless of the Form or its name, the region is responsible for appropriate central storage.

A construction permit is only valid with the current owner and must be renegotiated if property ownership changes before construction begins. For private ownerships, a temporary construction easement is recommended.

The construction permit is usually obtained without the payment of compensation (donation or mutual benefits, for example). Consult the region's Plans and Real Estate Services personnel for exceptions.

Permits are allowed where minor right of way acquisitions are obtained for intersections.

Mapping requirements for a construction permit are as follows:

1. Construction permits are not shown on the right of way plan.
2. The region's Project Coordinator's Office is provided two sets of right of way plans with all required construction permits delineated in red. The region sends one copy of the marked plans and copies of the permits to the HQ Real Estate Services Office. These plan sheets provide the following information:

- Ownership boundaries. (Confirmation of ownership and parcel boundaries may be completed by a search of county records and mapping. A formal title report is not required for construction permits.)
- Parcel number assigned to each ownership.
- Sufficient engineering detail to write legal descriptions.
- Statement of the intended use of each construction permit area.

1410.05 Programming for Funds

The phases in Figure 1410-1, in relation to plan development, apply to the authorization of stage programming.

When federal funds are involved, special attention must be given to Federal Highway Administration (FHWA) requirements. When federal participation in right of way costs is anticipated, specific authorization must be obtained from the FHWA. The rules and procedures provided in RCW 8.26, WAC 468-100, and the *Right of Way Manual* must be followed to ensure federal and state participation. In many cases, for example, federal funds are contingent upon the department setting up a relocation advisory procedure for any owner or tenant who is displaced by an improvement and desires such assistance. Relocation advisory assistance is a function of the HQ Real Estate Services Office.

1410.06 Appraisal and Acquisition

(1) All Highways

The phases in Figure 1410-1, in relation to plan development, apply to the authorization of right of way acquisition for all access highways.

(3) Exceptions

Exceptions can be made to the requirements in Figure 1410-1 if unusual hardships result for the individual or the state. The approval of right of way hardship action will be based on the individual parcel merit and is processed in accordance with hardship acquisition policy (*Right of Way Manual*).

1410.07 Transactions

(1) Private Ownerships

Right of way is ordinarily acquired from private property owners by region-level negotiation between the owner and the right of way agent.

(2) Utilities

The region ascertains ownership of all utilities and makes arrangements for necessary adjustment, including relocation of portions of the utility, if necessary. Provisions for relocation or adjustment are included in the PS&E plans when:

- The items are normal construction items and the department is obligated for the moving expense.
- The utility requests that relocation be performed by the department and the department has approved the request.

Readjustment may require the department to purchase substitute rights of way or easements for eventual transfer to the utility. Such rights of way or easements must be shown on the right of way plans with the same engineering detail as highway right of way.

Because of the considerable time required to obtain approvals, processing of utility relocation agreements must begin as soon as possible.

(3) Railways

Right of way is generally not acquired in fee from a railroad company. Instead, the state acquires a perpetual easement for encroachment or crossing. A construction and maintenance agreement may also be required. The easement must be shown on the right of way plan and identified by both highway and railroad stationing.

The HQ Design Office coordinates with the railroad design staff to determine a mutually agreeable location before the proposed easement is sent to Real Estate Services. The negotiations with the railroads are done by HQ Real Estate Services. Because of the considerable time required to obtain approvals, processing of railroad agreements must begin as soon as possible.

The perpetual easement document is executed by the Director, Real Estate Services.

(4) Federal Agencies

Acquisition of right of way from most federal agencies must be negotiated and processed through several federal offices. Allow at least one year's time for efficient and economical right of way acquisition. Depending upon the particular federal agency involved, special exhibit maps and other documentation may be required, and the right of way may be acquired as an easement rather than in fee.

(5) Other State Agencies



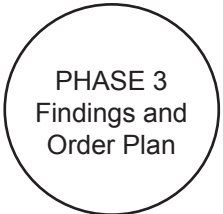


Acquisition from other state agencies must be negotiated and processed through the individual agencies or designees. Negotiations with other state agencies are generally handled by HQ Real Estate Services. As in the case of federal agencies, substantial time must be allowed for compliance with applicable statutes and regulations peculiar to the agency before right of way will be granted.

(6) Condemnations

Condemnation may result from a disagreement between the department and the owner as to a fair settlement or from a faulty title. Since several months might elapse between the filing of a condemnation case and a court decision, the HQ Real Estate Services Office can be requested to investigate the possibility of obtaining a negotiated possession and use agreement as in the case of an emergency project, or when a sundry site is required at once.

1410.08 Documentation

A list of the documents that are required to be preserved [in the Design Documentation Package (DDP) or the Project File (PF)] is on the following web site:
<http://www.wsdot.wa.gov/eesc/design/projectdev/>

| Plan Approval | Plan Approval | Programming of Funds for Appraisal and Acquisition |
|---|---|---|
| Limited Access Highways | | |
|  | <p>State Design Engineer* approves Access Report Plan for prehearing discussion with county and/or city officials.</p> <p>The access report plan may be used for preparation of federal-aid program data for appraisals if federal funds are to be used for right of way acquisition. It may be used for requesting advance appraisal funds through the <u>Planning and Capital Program Management</u> for all projects with either state or federal funds.</p> | <p>Program appraisals of total takes. (No acquisition.)</p> |
|  | <p>State Design Engineer* approves Access Hearing Plan for use at a public access hearing. R/W information is complete.</p> <p>The access hearing plan may be used for the preparation of federal-aid program data for negotiations on federally funded projects, and for the preparation of true cost estimates and fund requests.</p> | <p>Program all appraisals and acquisitions.</p> <p>Note: Do not appraise or purchase partial takes in areas subject to controversy. Appraise or purchase total takes only if federal design hearing requirements are met.</p> |
|  | <p>No signature required.</p> <p>Results of Findings and Order Access Hearing are marked in red and green on Access Hearing plan and sent to <u>HQ</u> R/W Plans Branch.</p> | <p>Program appraisals of partial takes where data is available to appraisers.</p> <p>Acquisition of total takes.</p> |
|  | <p>State Design Engineer* Approves final R/W and L/A plans or approves revisions to established R/W and L/A plans</p> | <p>Program all remaining appraisals and all remaining acquisitions.</p> <p>Note: If appeal period is not complete, delay action in areas subject to controversy and possible appeal.</p> |
| Managed Access Highways | | |
|  | <p>R/W plan submitted to <u>HQ</u> R/W Plans Branch for approval.</p> | <p>Program appraisals</p> |
| | <p>State Design Engineer* approves new R/W plans or approves revisions to established R/W plans.</p> | <p>Program all appraisals and acquisitions.</p> |

*Or a designee.

Appraisal and Acquisition
Figure 1410-1